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ABSTRACT

New immigration legislation imposes civil and criminal penalties on employers who knowingly hire undocumented workers, and requires employers to verify the legal status of every new hire. The law also extends amnesty to possibly millions of undocumented immigrants who entered the United States prior to 1982. In addition, undocumented immigrants who have worked in the United States perishable agriculture for at least 90 days between May 1, 1985 and May 1, 1986 will be granted legal status under the newly established seasonal agricultural worker program. This program also provides agricultural employers with access to "replenishment workers" if a worker shortage develops in perishable commodities. Replenishment workers will be granted temporary resident status, but must remain in agricultural jobs for at least three years to avoid deportation. Additional funding is authorized for the Immigration and Naturalization Service (INS) to carry out the additional responsibilities imposed by the new law. Effective control of illegal immigration will depend largely on enforcement, a burden which will rest on employers. Millions of new immigrant members of American society will require incorporation into the mainstream. (Author/LHW)

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A Layman's Guide to 1986 U.S. Immigration Reform

by

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This Policy Discussion Paper was prepared as part of The Urban Institute's larger project, Study of the Impacts of Immigration in California, funded by the Weingart Foundation, the Atlantic Richfield Foundation, the Ahmanson Foundation, and the Times Mirror Foundation. The helpful comments of Thomas Espenshade, J. Edward Taylor, Joyce Vialet, John Goering, Rod Field, Stephen Hitchner, and Sally Pitofsky are gratefully acknowledged, as is the capable technical assistance of Terri Murray. Conclusions or opinions expressed in Institute publications are those of the authors and do not necessarily reflect the views of other staff members, officers, or trustees of the Institute; advisory groups; or any organizations that provide financial support to the Institute.

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FOREWORD

Issues concerning the level and composition of immigration to the United States have assumed prominent positions on the agendas of many policymakers. Perhaps nowhere are immigration's effects more keenly felt than in California, where one-quarter of all foreign-born persons in the United States currently reside.

This Policy Discussion Paper series is aimed at improving the quality of the policy-making process through a broad distribution of research findings on the consequences of immigration to California. These dissemination activities are part of The Urban Institute's larger project, Study of the Impacts of Immigration in California, funded by the Weingart Foundation, the Atlantic Richfield Foundation, the Ahmanson Foundation, and the Times Mirror Foundation. Important policy issues being addressed include (a) economic and fiscal issues associated with immigration, (b) the character and tempo of assimilation processes, and (c) the impact on California of proposals for immigration reform. All major immigrant groups to California—not just Mexicans—are being included, as are the comparative effects in northern as well as in southern California.

The Urban Institute's objective is to make a positive contribution to the policy process. It is committed to getting its work into the hands of people who can use it and rely upon it to make judgments of their own on future policy directions. Related titles are listed at the end of this paper.

Thomas J. Espenshade
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A LAYMAN'S GUIDE TO 1986 U.S. IMMIGRATION REFORM

Executive Summary

After nearly six years of debate and controversy, the 99th Congress passed a comprehensive reform of U.S. immigration policy in October 1986 that was signed into law by President Reagan in November 1986. The Immigration Reform and Control Act of 1986 is the most sweeping revision of the nation's immigration laws since 1965. The legislation imposes civil and criminal penalties on employers who knowingly hire undocumented workers and requires employers to verify the legal status of every new hire. The law also extends amnesty to potentially millions of undocumented immigrants who entered the United States prior to 1982. In addition, undocumented immigrants who have worked in U.S. perishable agriculture for at least 90 days between May 1, 1985 and May 1, 1986 will be granted legal status under the newly established seasonal agricultural worker program. This program also provides agricultural employers with access to "replenishment workers" if a worker shortage develops in perishable commodities. Replenishment workers will be granted temporary resident status, but must remain in agricultural jobs for at least three years to avoid deportation. Additional funding is authorized for the INS to carry out the additional responsibilities imposed by the new law.

Whether this reform of U.S. immigration policy will achieve its goal of effectively controlling illegal immigration will depend in part upon the rigor with which the employer sanctions are enforced. Because policing millions of employers is virtually impossible, the burden of enforcement will ultimately rest with employers themselves. The new law will also present the nation with a challenge of incorporating millions of new immigrant members of American society into the mainstream.

INTRODUCTION

After nearly six years of debate and controversy, the Immigration Reform and Control Act of 1986 was passed by the 99th Congress in October 1986 and signed into law by President Reagan in November 1986. The new law will punish employers who knowingly hire undocumented immigrants, grant amnesty to possibly millions of immigrants who have lived in the United States continuously since 1982, establish a seasonal agricultural worker program, and provide the Immigration and Naturalization Service (INS) with funding to augment its enforcement activities. It is the most sweeping revision of this country's immigration laws since 1965.

Passage of the comprehensive reform bill caught many observers by surprise because the House had rejected a rule for considering immigration legislation in September, and supporters of the bill labeled the issue dead. The debate was revived, however, after a small group of House Democrats and Republicans led by Representative Charles E. Schumer (D-N.Y.) worked out a compromise involving the foreign agricultural worker provision, and immigration reform legislation was passed by the House on October 9th by a 230 to 166 vote. The Senate had passed its version of immigration reform by a vote of 69 to 30 on September 19, 1985. A conference committee was appointed immediately to work out the remaining differences between the House and Senate versions. On October 14th, the conference committee reached agreement, and the compromise legislation was approved by the House on October 15th, 238 to 173. The Senate adopted the conference report by a vote of 63 to 24 on October 17th.

This paper examines how U.S. immigration policy is changed by the new Immigration Reform and Control Act and how these changes will be

implemented. The first part of what follows presents a brief review of Congressional action on comprehensive immigration reform legislation in the 1980s. The second part of the paper summarizes the main points of the Immigration and Nationality Act of 1952 prior to the 1986 amendments. The major provisions of the new immigration law regarding employer sanctions, the legalization program, the seasonal agricultural worker program, and the increased enforcement capabilities of the INS are detailed in the final section of the paper.

CONGRESSIONAL ACTION ON RECENT REFORM LEGISLATION

The immediate legislative history of comprehensive reform dates back to the 97th Congress (1981-1982). In response to the final report of the Select Commission on Immigration and Refugee Policy, the 97th Congress initiated the first joint Congressional hearings on immigration since 1951. These hearings resulted in the introduction of identical immigration reform bills in the House and Senate. The legislation, popularly referred to as the Simpson-Mazzoli bill after its sponsors, Senator Alan K. Simpson (R-Wyo.) and Representative Romano L. Mazzoli (D-Ky.), included employer sanctions and a legalization program. The bill passed the Senate on August 17, 1982 by a vote of 80 to 19. The House Judiciary Committee reported the bill but took no final action.

The legislation was reintroduced in the 98th Congress (1983-1984) as two different bills. The Senate passed its version of immigration reform on May 18, 1983 by a vote of 76 to 13. The House Judiciary Committee also approved the bill in 1983, but it was not submitted for floor consideration until a year later. After seven days of debate, the House narrowly passed the bill by a vote of 216 to 211 on June 20, 1984. A House-Senate conference committee

was appointed to resolve the differences between the House and Senate versions. But an impasse was reached over the federal government's share of providing legalization assistance to the states, and for the second time in three years Congress adjourned without enacting a comprehensive reform of U.S. immigration laws.

THE IMMIGRATION AND NATIONALITY ACT

Since 1952, legal immigration to the United States has been governed by the Immigration and Nationality Act, as amended through 1986. This body of law established a worldwide ceiling on immigration to the United States of 270,000 persons a year and a 20,000 persons-per-country limit. Visas are distributed according to a six-category preference system that gives priority to family members and those with skills needed by the United States. (The Refugee Act of 1980 eliminated refugees as a category of the preference system and established procedures for a regular flow of refugees and emergency admissions.)

Persons granted nonimmigrant visas are admitted to the United States for specific purposes and specific periods of time. Thirteen categories of nonimmigrants are identified, including students, tourists, businessmen, and temporary workers. The majority of temporary workers admitted to the United States enter as "H" workers. The H temporary-worker category has four subsections: (1) workers of distinguished merit and ability, (2) H-2 workers, admitted only if similarly skilled U.S. workers are not available, (3) trainees, and (4) spouses and children of the above. Of these, the H-2 provision has been the most widely used and is revised and expanded by the 1986 immigration amendments. In the past, H-2 workers have accounted for about 43,000 entrants annually, including 18,000 agricultural workers.

Immigrants who have been lawfully admitted as permanent residents may apply for U.S. citizenship provided that they are at least 18 years old and have resided in the United States for at least five years. The law also requires candidates for citizenship to be of good moral character, to believe in the U.S. Constitution, and to demonstrate the ability to speak, read, and write simple English. Some of these requirements may be waived in special circumstances.

The 1952 Act and subsequent amendments to it also contain provisions that apply specifically to illegal or undocumented immigrants. For instance, an alien who enters the United States illegally or who violates the terms of his visa can be charged with a misdemeanor. The penalties for this offense are a jail term of up to six months and/or a $500 fine. A second offense is considered a felony and carries a penalty of up to two years of imprisonment and/or a fine of $1,000. Despite these penalties, however, most immigrants who enter this country illegally are granted voluntary departure.

Persons who smuggle, harbor, transport, or otherwise encourage illegal entrants can also be prosecuted under the existing law. These actions are considered felonies and are punishable by a fine of not more than $2,000 and/or a jail sentence of up to five years for each alien involved. Because "harboring" did not extend to employment, under the old law employers were able to hire undocumented immigrants, although any illegal immigrant who accepted employment could be deported.

The INS and the State Department's Bureau of Consular Affairs are the principal agencies empowered to administer immigration law. The State Department's activities include overseas functions, whereas the INS is basically responsible for the domestic enforcement of immigration laws.

THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Employer Penalties

A key provision of the new immigration law penalizes employers who knowingly hire undocumented workers. All employers (including families who hire domestics) are subject to employer sanctions, regardless of the number of persons they employ. The intent of employer penalties is to reduce employment opportunities for illegal aliens in the United States and thereby remove the major motivation for workers to enter without proper documentation.

The new immigration law requires every employer to verify a prospective employee's right to work in the United States by inspecting either a passport, a certificate of naturalization, a certificate of U.S. citizenship, or a resident alien card. A certificate of naturalization is issued to immigrants who become U.S. citizens whereas a certificate of U.S. citizenship is granted to children born abroad to citizen parents or to children of naturalized parents. In some instances, the spouse of a U.S. citizen may also receive a certificate of U.S. citizenship. If these documents are not available, an employer must then examine both an employment authorization document--a Social Security card or a birth certificate--and an identity document--a driver's license, a state-issued card, or in certain cases some other document approved by the Attorney General.

The new law, however, does not require an employer to confirm the authenticity of any of these documents. A form is completed by both parties in which the employer attests that he has seen the proper documents and the employee pledges that he is eligible to work in the United States. The employer must keep this form for three years or one year after the employee terminates employment, whichever is longer. These provisions extend only to

new hires. A "grandfather clause" in the new law permits employers to avoid penalties for any undocumented workers hired before employer sanctions were established. The law also directs the President to monitor the verification system and to recommend to Congress any changes necessary to establish a more secure system. However, the law authorizes no new documents, such as a national identity card.

Employers will incur civil fines for failing to check the legal status of every new employee they hire. A fine from $100 to $1,000 can be assessed for each offense. The penalties apply regardless of the legal status of the new hire.

In addition, employers who knowingly hire undocumented workers will be subject to civil and/or criminal penalties. The law contains a three-tiered penalty structure: (1) a fine ranging from $250 to $2,000 for each undocumented alien in the case of a first offense, (2) a $2,000 to $5,000 fine for each alien for a second offense, and (3) a $3,000 to $10,000 fine for each alien for the third and subsequent offenses. Employers who are convicted of a "pattern and practice" of hiring illegal workers will be subject to imprisonment for up to six months regardless of the number of aliens involved and/or a $3,000 fine per each alien involved.

Employers would not be subject to fines and jail terms immediately. The law provides for a six-month education period followed by a one-year warning or citation period. During the warning period, citations would be issued to first offenders in lieu of fines; however, once an employer receives a citation, he is then subject to civil fines for subsequent offenses even though the warning period may not have expired.

Employer sanctions will not terminate automatically after a specified period. However, the General Accounting Office (GAO) is required to submit three annual reports to Congress on whether the implementation of employer penalties has resulted in a pattern of employment discrimination based on national origins. If widespread discrimination is found, employer sanctions would be terminated, provided Congress approves of the GAO findings.

In response to fears of Hispanic and civil rights groups that employer sanctions could aggravate the unemployment problems of minorities because employers might be hesitant to hire anyone who "looks foreign," the new immigration law contains an antidiscrimination clause. A Special Counsel will be established in the Department of Justice to investigate and prosecute charges of discrimination resulting from unfair immigration-related employment practices. An employer found guilty of discrimination could be required to pay a fine of up to $2,000 and to hire the individual with back pay. These penalties apply only to employers of four or more persons and are waived if the discrimination is covered under the Civil Rights Act of 1964. The law allows an employer to choose a U.S. citizen over an alien when both applicants are equally qualified. Finally, the antidiscrimination measures would terminate if employer sanctions are terminated, or if Congress, in response to the GAO findings, considers either that no significant discrimination has resulted from employer sanctions or that the antidiscrimination measures impose an unreasonable burden on employers.

The Legalization Program

The new immigration law legalizes undocumented aliens who have resided in the United States in an illegal status continuously since January 1, 1982 and who are not excludable as immigrants. An alien can still claim continuous

residence if his absence from the United States was "brief," "innocent," or "casual." Illegal aliens who meet these requirements will be granted temporary resident status for 18 months. They can then adjust their status to permanent resident provided they can demonstrate a minimal understanding of English and a basic knowledge of U.S. history and government or are receiving instruction in these areas. Certain Cuban and Haitian entrants who arrived in the United States prior to 1982 will be granted permanent resident status immediately.

Applicants for the legalization program must prove their eligibility by producing documents that support their claim of continuous residence. Employment-related documents are considered the best evidence. Independent corroboration of the information contained in the documents is also required and may be submitted in the form of affidavits. Applications for the legalization program are confidential and may only be used to determine an immigrant's eligibility for amnesty. Aliens who are denied legalization are entitled to an administrative and a judicial review of their applications. There are no numerical restrictions on the number of aliens who can receive amnesty under the legalization program.

With the exception of Cuban and Haitian entrants, newly legalized immigrants are barred from most federally funded public assistance programs for five years. They would be entitled, however, to emergency medical services, medical assistance for pregnant women and children, and aid to blind, aged, or disabled persons, as well as other specified benefits. The new law provides $1 billion a year for four fiscal years (1988-1991) to state and local governments to help defray any public assistance, health, and education costs resulting from legalization. However, the cost of Medicaid

benefits and of Supplemental Security Income provided by the federal government to newly legalized aliens will be deducted from the $4 billion total. States would receive their funding based on a formula that includes the number of legalized aliens in the state and the amount of money a state spends on such aliens.

Information on the benefits of the legalization program and the requirements necessary to obtain such benefits is required to be disseminated broadly by the Attorney General and other designated parties. For example, immigrants will be told how to adjust their status from temporary to permanent. They will also be informed of any restrictions on foreign travel, on conditions for their employment, and of the compulsory school enrollment requirements for their children.

H-2 Workers and Seasonal Agricultural Workers

The existing H-2 temporary foreign worker program is revised and expanded under the new immigration law. For example, employers are now required to give the Secretary of Labor no more than 60 days' advance notice of their need for foreign workers, replacing the 80-day requirement. Employers must still attempt to find domestic workers for these jobs, but it is no longer necessary to conduct a national search. Under the former H-2 program an employer could use temporary foreign labor only if domestic workers capable of performing the jobs could not be found in the country. The new H-2 program requires only that qualified domestic workers are not available at the time and place needed. Moreover, the Secretary of Labor must decide upon an employer's request no less than 20 days in advance of his need and expedited appeal procedures are available to those employers whose requests are denied.

H-2 agricultural workers are guaranteed certain benefits under the new program. They are entitled to free housing, travel and subsistence costs, and worker compensation. Legal services will also be made available to H-2 workers, but only for work-related matters.

The new immigration law also contains a separate program that will give some seasonal agricultural workers temporary lawful status. This provision caused considerable controversy during the immigration debate. The Senate had originally proposed a program that would allow 350,000 foreign agricultural workers into the United States for a period of up to nine months to pick perishable crops. As an incentive for these workers to return home, employers would be required to withhold 20 percent of their pay and give it to them only in their native countries. This program was scheduled to end in three years unless Congress extended it. The House strongly opposed a guest worker program and offered their own amendment. The House version would have granted permanent legal status to any undocumented worker who could show that they were employed in U.S. agriculture for at least 60 days between May 1, 1985 and May 1, 1986.

The final version of the foreign agricultural worker program grants temporary resident status to aliens who qualify as either special agricultural workers or replenishment workers. There are two groups of special agricultural workers. Group 1 includes those aliens who have worked in U.S. perishable agriculture for at least 90 days a year for the three years between May 1, 1983 and May 1, 1986; Group 2 is comprised of those aliens who have worked at least 90 days in U.S. perishable agriculture between May 1, 1985 and May 1, 1986. Group 1 workers are admitted as temporary residents for one year after which they can adjust their status to permanent residents. The number

of aliens who could be granted lawful status as Group 1 workers is capped at 350,000. Group 2 workers are also eligible for temporary residence but must remain in that status for two years before applying for an adjustment to permanent residence. There is no numerical limitation on the number of aliens who could be legally admitted to the United States as Group 2 workers. Both groups of special agricultural workers are barred from Aid to Families with Dependent Children (AFDC) for five years and will have limited access to Medicaid. In addition, workers in either of these groups are not required to remain in agricultural jobs.

Replenishment workers would be admitted to the United States as temporary residents if the Secretaries of Labor and Agriculture determine that a shortage of workers exists in perishable crops. Replenishment workers must remain in agricultural jobs at least 90 days a year for three years as temporary residents before applying for permanent residence. To become naturalized U.S. citizens, however, these workers must meet the above requirements for an additional two years. Replenishment workers would be ineligible to receive most federally funded public assistance aid—except Food Stamps—to the same extent as undocumented aliens admitted under the provisions of the new legalization program. The replenishment worker program is scheduled to begin in fiscal year 1990 and end in fiscal year 1993. The maximum number of replenishment workers that could be admitted each year will be based on a formula that takes into account the number of seasonal agricultural workers admitted to the United States as temporary residents.

Increased Enforcement Capabilities

The INS will receive a supplemental authorization of $422 million in fiscal year 1987 and $419 million in fiscal year 1988 for enforcement

activities, including a 50 percent increase in the number of Border Patrol personnel (from 3,214 authorized positions in FY 1986 to 4,822 authorized positions in FY 1987). In addition, $12 million and $15 million in fiscal years 1987 and 1988, respectively, will be allocated to the Executive Office of Immigration Review to carry out the additional duties of the INS outlined in the new immigration law. Finally, $35 million will be set aside in a contingency fund for use in immigration emergencies.

The new immigration law also requires states to use INS computer records to verify the legal status of all noncitizens who apply for public assistance benefits. Programs that would be affected include AFDC, Medicaid, unemployment compensation, public housing, student aid, and Food Stamps. States would receive full reimbursement for implementing the verification system. In some situations, the Secretary of the appropriate department could recommend a waiver of this rule if verification for a particular covered program would not be cost-effective or would be redundant.

Although the INS will generally play a larger role in the enforcement of U.S. immigration laws, one activity will be restricted. INS agents will now be required to obtain a search warrant or the consent of the owner to look for illegal aliens in open fields.

CONCLUSIONS

The Immigration Reform and Control Act of 1986 is the most comprehensive revision of U.S. immigration policy since 1965 and has the potential to affect millions of aliens and citizens. Many undocumented immigrants who have lived with the fear of deportation will now have a legal right to stay and work in the United States. Growers will have access to a supply of legal laborers. Employers will now be asked to play an enforcement role and all job applicants

will be required to prove that they are eligible to work in the United States. What began as an attempt to control our borders has resulted in landmark legislation that could eventually touch the lives of everyone living in the United States.

The question remains, however, whether this immigration reform will have the intended effect. It is important to note that there are factors that pull immigrants to the United States and factors that push immigrants from their native countries. The perceived quality and style of life, the economic opportunities, and the large existing population of immigrants in the United States will most likely continue to attract immigrants. Moreover, the deteriorating economic conditions in Mexico and the political instability in Central America, for example, will stimulate immigrants to look elsewhere for improved living conditions.

Legislation is only the first step in stemming the flow of undocumented workers into the United States. The experience of several states with employer penalties--including California, where it is estimated that one-half of the two million illegal immigrants counted in the 1980 census reside--suggests that laws that are not enforced do not work. The new law penalizes employers who hire illegal aliens, but it is virtually impossible for the INS to police millions of businesses. The burden of enforcement will ultimately rest with the employers themselves.

At the same time that incentives for illegal immigrants to enter the country are being constricted, legal status is being granted to possibly millions of undocumented immigrants who have been living and working in the United States since 1982. The United States is faced with the challenge of incorporating these and other new immigrants into the mainstream of society.

There are some signs, however, that this process may be encountering resistance. In California, for example, Proposition 63, which amends that State's Constitution to declare English as the official language, was approved by voters in November's election by a 73 percent to 27 percent margin. The perception that immigrants are not learning English and that the United States is becoming a bilingual nation has led to similar ballot initiatives in Florida and in some southwestern states with growing immigrant populations. Special policies and programs to facilitate the movement of immigrants into the mainstream may be needed not only to neutralize these types of emerging nativist tendencies but also to provide immigrants with the opportunity to participate fully as members of American society.

Interested readers can obtain more-detailed information about the U.S. Immigration Reform and Control Act of 1986 from the following sources:

1. Conference Report for the "Immigration Reform and Control Act of 1986." October 14, 1986.

   Available from the Senate Document Room B04, Hart Senate Office Building, Washington, D.C. 20510. (202) 224-7860

2. Committee Print for the "`Immigration Reform and Control Act of 1986': A Summary and Explanation." December 1986.

   Available from the Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, D.C. 20402. (202) 783-3238

3. The Federal Immigration Law Reporter.

   Available from the Washington Service Bureau, Inc., 655 Fifteenth Street, N.W., Washington, D.C. 20005. (202) 833-9200

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